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No. 80-2049

In the Supreme Court of the United States

OCTOBER TERM, 1980

GEORGE A. RALSTON, WARDEN,

Petitioner,

v.

JOHN CARROLL ROBINSON,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE RESPONDENT

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ADDITIONAL CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

18 U.S.C. § 5006 (e) and (f) provide:

> (e) "committed youth offender" is one committed for treatment hereunder to the custody of the Attorney General pursuant to sections 5010(b) and 5010(c) of this chapter;
>
> (f) "treatment" means corrective and preventive guidance and training designed to protect the public by correcting the antisocial tendencies of youth offenders.

18 U.S.C. § 5010 provides:

> (a) If the court is of the opinion that the youth offender does not need commitment, it may suspend the imposition or execution of sentence and place the youth offender on probation.
>
> (b) If the court shall find that a convicted person is a youth offender, and the offense is punishable by imprisonment under applicable provisions of law other than this subsection, the court may, in lieu of the penalty of imprisonment otherwise provided by law, sentence the youth offender to the custody of the Attorney General for treatment and supervision pursuant to this chapter until discharged by the [United States Parole] Commission as provided in section 5017(c) of this chapter; or
>
> (c) If the court shall find that the youth offender may not be able to derive maximum benefit from treatment by the Commission prior to the expiration of six years from the date of conviction it may, in lieu of the penalty of imprisonment otherwise provided by law, sentence the youth offender to the custody of the Attorney General for treatment and supervision pursuant to this chapter for any further period that may be authorized by law for the offense or offenses of which he stands convicted or until discharged by the Commission as provided in section 5017(d) of this chapter.

(d) If the court shall find that the youth offender will not derive benefit from treatment under subsection (b) or (c), then the court may sentence the youth offender under any other applicable penalty provision.

(e) If the court desires additional information as to whether a youth offender will derive benefit from treatment under subsections (b) or (c) it may order that he be committed to the custody of the Attorney General for observation and study at an appropriate classification center or agency. Within sixty days from the date of the order, or such additional period as the court may grant, the Commission shall report to the court its findings.

18 U.S.C. § 5017 provides:

(a) The Commission may at any time after reasonable notice to the Director [of the Bureau of Prisons] release conditionally under supervision a committed youth offender in accordance with the provisions of section 4206 of this title. When, in the judgment of the Director, a committed youth offender should be released conditionally under supervision he shall so report and recommend to the Commission.

(b) The Commission may discharge a committed youth offender unconditionally at the expiration of one year from the date of conditional release.

(c) A youth offender committed under section 5010(b) of this chapter shall be released conditionally under supervision on or before the expiration of four years from the date of his conviction and shall be discharged unconditionally on or before six years from the date of his conviction.

(d) A youth offender committed under section 5010(c) of this chapter shall be released conditionally under supervision not later than two years before the expiration of the term imposed by the court. He may be discharged unconditionally at the expiration of not less than one year from the date of his conditional re-

lease. He shall be discharged unconditionally on or before the expiration of the maximum sentence imposed, computed uninterruptedly from the date of conviction.

(e) Commutation of sentence authorized by any Act of Congress shall not be granted as a matter of right to committed youth offenders but only in accordance with rules prescribed by the Director with the approval of the Commission.

The Fifth Amendment to the United States Constitution provides, in pertinent part:

[N]or shall any person be subject for the same offense to be twice put in jeopardy of life or limb; . . . nor be deprived of life, liberty, or property, without due process of law . . . .

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ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE RESPONDENT

STATEMENT OF THE CASE

In 1974, respondent John Carroll Robinson, then seventeen years old, was sentenced in the Superior Court of the District of Columbia to a ten-year term for second-degree murder. 642 F.2d 1077, 1077-78 (7th Cir. 1981), Pet. App. A, 2a.[1] The trial judge sentenced Robinson under

[1] References to the appendices to the Petition for a Writ of Certiorari in this case are denoted "Pet. App. ____, ____."

the provisions of the Youth Corrections Act ("YCA" or "the Act"), 18 U.S.C. § 5010(c), with the recommendation that "his release be dependent upon the attainment of at least an eighth grade level of education and the successful completion of a trade of his own choosing." The judge also recommended that "the defendant shall participate in intensive, individual therapy on a weekly basis . . . ." 642 F.2d at 1078, Pet. App. A, 2a.

In 1975, Robinson was found guilty of assaulting a federal officer while he was in prison. He was sentenced to a sixty-six month adult sentence to follow his YCA sentence. 462 F.2d at 1078, Pet. App. A, 2a-3a. In 1977, Robinson pled guilty to assaulting a federal officer and was sentenced as an adult to serve a consecutive term of one year and one day. 462 F.2d at 1078, Pet. App. A, 3a.

Despite the fact that his initial sentence designated him as a YCA prisoner, apparently Robinson has never been segregated from non-YCA prisoners nor given any special YCA treatment as mandated by the sentencing judge and by the YCA. The government concedes that no YCA treatment has been accorded Robinson since he received his adult sentences. Pet. Brief at 7.[2]

The District Court's Decision.

Robinson was granted a writ of habeas corpus by the United States District Court for the Southern District of Illinois. Chief Judge Foreman found that denying Robinson YCA-mandated treatment and segregation from non-YCA adult offenders neither fulfills the letter nor the spirit of the law. The district court emphasized the clarity of the dictates of the statute:

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[2] References to the Brief for the Petitioner in this case are denoted "Pet. Brief at ____."

> Congress has set forth in very specific terms the statutory scheme under the YCA. The statute leaves little doubt as to exactly what Congress' intention was under the YCA. The statute speaks in directive and not discretionary terms. The Court has fully reviewed the very cogent arguments raised by the United States Government and its objections to The Report and Recommendation of the Magistrate, but feels that any changes in the interpretation of the YCA must come from Congress, and is not a role of the federal courts.

Pet. App. C, 19a.

On January 7, 1980, the district court ordered the government to transfer Robinson from the penitentiary at Marion "to an institution at which he will be segregated from adult offenders and will receive treatment as prescribed by 18 U.S.C. § 5011 . . . ." Pet. App. C, 20a. The execution of that order has been stayed pending appeal.

The Decision Of The Seventh Circuit.

On appeal to the United States Court of Appeals for the Seventh Circuit, the decision of the district court was unanimously affirmed. The court held that "under the provisions of the YCA, [Robinson] must be treated pursuant to the YCA until the termination of his YCA imposed sentence despite his subsequent sentencing as an adult." 642 F.2d at 1077, Pet. App. A, 2a. The court based its decision on the language of the statute, the legislative history, and the decision of this Court in *Dorszynski* v. *United States,* 418 U.S. 424 (1974). 642 F.2d at 1079-80, Pet. App. A, 5a-7a. The court concluded that the YCA does not permit a subsequent judge or the Bureau of Prisons to reevaluate and modify the YCA sentence imposed by the original sentencing judge. 642 F.2d at 1079, 1082, Pet. App. A, 6a-7a, 13a-14a. Thus, the court did not reach constitutional issues raised by Robinson. 642 F.2d at 1079 n.4, Pet. App. A, 5a n.4.

SUMMARY OF ARGUMENT

I. A. Congress enacted the YCA to provide a special alternative system of sentencing and treatment for young offenders designed to promote their rehabilitation. In the YCA, Congress expanded the sentencing options available to judges sentencing youthful offenders. The YCA dictates that those offenders selected by judges for YCA treatment be separated from the mainstream of the prison population and afforded special rehabilitative programs. Segregation from non-YCA prisoners and rehabilitative treatment are the cornerstones of the regimen Congress created. *Durst* v. *United States*, 434 U.S. 542, 545-47 (1978). The Bureau of Prisons improperly has excluded an entire category of YCA prisoners, who, like Robinson, have incurred consecutive adult sentences, from treatment under the YCA.

B. The language of the Act is unambiguous. The YCA delegates to the sentencing judge alone the authority to determine whether an offender under the age of twenty-two, regardless of the nature of his crime, will benefit from the special treatment the YCA mandates. The YCA is not limited in application to youths who commit minor offenses. The sentencing judge's decision regarding the application of the YCA in a particular case is not reviewable, *Dorszynski* v. *United States*, 418 U.S. 424 (1974); nor does the Act provide any mechanism by which an offender's status as a YCA prisoner may be revoked or forfeited. The language of the YCA, its legislative history, and the cases applying the Act unmistakably dictate that a prisoner sentenced under the YCA remains subject to the terms of the statute until the expiration of his YCA sentence, regardless of any consecutive adult sentences subsequently imposed upon him.

II. A. The Bureau of Prisons cannot substitute its penological philosophy for the congressional will. The improper denial of YCA treatment to Robinson cannot be justified on the basis of a policy statement promulgated by the Bureau of Prisons. A policy that excludes YCA prisoners with consecutive adult sentences from YCA treatment is void because it conflicts with the dictates of the statute. The Bureau improperly has usurped the legislative function by attempting to modify the scope of the Act.

B.1. Contrary to the assertions of the Bureau, a consecutive adult sentence imposed by a subsequent sentencing judge is not intended to and may not affect the YCA sentence the offender currently is serving. As the Seventh Circuit correctly held, to treat the consecutive adult sentence imposed by the subsequent judge as superseding the YCA sentence contravenes both the clear dictates of the YCA and longstanding sentencing doctrine. *Thompson* v. *Carlson,* 624 F.2d 415 (3d Cir. 1980), in which the United States Court of Appeals for the Third Circuit adopts the Bureau's position on this issue, was wrongly decided and was properly rejected by the Seventh Circuit.

B.2. The Bureau of Prisons' authority under the YCA is strictly limited to implementing the specific dictates of the statute. The YCA removes from the prison authorities much of the discretion they routinely exercised prior to its enactment. For the special class of prisoners created under the YCA, Congress has directed prison officials to establish facilities and programs that conform with the specific requirements of the YCA. These officials have no authority to revoke YCA sentences nor to foreclose to any segment of the YCA population the treatment and segregation the YCA mandates.

The Bureau of Prisons, in a strained reading of the Act, would read out of the Act the segregation requirement. The modifying phrase "insofar as practical" upon which the Bureau relies, however, does not bear upon the segregation requirement. The Seventh Circuit in this case, and the Third Circuit in *Thompson* v. *Carlson*, 624 F.2d 415 (3d Cir. 1980), rejected the Bureau's contention. *Outing v. Bell*, 632 F.2d 1144 (4th Cir. 1980), *cert. denied*, 101 S. Ct. 1710 (1981), which held to the contrary, was wrongly decided.

III. A. The Bureau of Prisons' interpretation of the YCA would render the Act unconstitutional. Courts have upheld the YCA against equal protection challenges because its unique rehabilitative opportunities serve as a *quid pro quo* for imposing a longer commitment on a YCA offender than would be permissible if that offender were sentenced as an ordinary adult. *E.g.*, *Carter* v. *United States*, 306 F.2d 283, 285 (D.C. Cir. 1962). Even if the YCA sentence does not exceed the maximum adult sentence for the offense, rehabilitative treatment may well be the *quid pro quo* for the length of the YCA sentence the judge imposes.

B. Moreover, the elimination of his entitlement to YCA-mandated treatment and segregation increased the severity of Robinson's sentence after he had begun to serve it, in violation of the guarantee against double jeopardy. The Act does not contain any provision authorizing the review or reevaluation of a YCA sentence after it is imposed, and Robinson had no reason to anticipate that the nature of his sentence could be dramatically altered after he had begun serving it. *See United States* v. *DiFrancesco*, 49 U.S.L.W. 4022 (Dec. 9, 1980) (No. 79-567).

C. Robinson's sentence entitled him to specific treatment. Even if Robinson could be deprived of his statutory right to YCA treatment, that deprivation could not take place without due process. *Micklus* v. *Carlson*, 632 F.2d 227 (3d Cir. 1980). In this case, the subsequent sentencing judges never considered whether Robinson could continue to derive benefit from YCA treatment for the remaining period of his YCA sentence. No administrative hearing was provided. Whatever process was required, Robinson did not receive it in this case.

IV. If the Court is prevented from rendering the decision in this case before the Court determines that the case has become moot, the writ of certiorari should be dismissed as improvidently granted. The decision of the court below should stand.

ARGUMENT

INTRODUCTION

This case is one in a long series of cases reflecting the Bureau of Prisons' unwillingness to implement the will of Congress as reflected in the YCA. *See, e.g., Watts* v. *Hadden,* 651 F.2d 1354 (10th Cir. 1981); *Micklus* v. *Carlson,* 632 F.2d 227 (3d Cir. 1980); *Brown* v. *Carlson,* 431 F. Supp. 755 (W.D. Wis. 1977). Although over thirty years have passed since the statute's enactment, the government's own brief in this case recounts the Bureau's failure to respond to the clear and specific commands set forth in the Act. Pet. Brief at 22-23 n.15, 25-26 n.16.

There is no statutory basis, nor is there any basis in the underlying policies of the Act, for the Bureau's denial of YCA treatment to YCA offenders such as Robinson. The Bureau's handling of YCA offenders committed to its custody renders meaningless the elaborate system devised by Congress. The considered determination entrusted to the sentencing judge becomes an empty formality when that determination can be ignored by the prison administrators.

As the court noted in *Brown* v. *Carlson,* the "provisions of the YCA would be inexplicable had not Congress intended the treatment of YCA offenders to differ from what it understood to be the prevailing treatment of non-YCA offenders, young and old." 431 F. Supp. at 766. The Bureau of Prisons must not be permitted to disregard the system Congress has directed it to establish for the rehabilitation of youthful offenders.

I.

THE YCA UNAMBIGUOUSLY VESTS IN THE SENTENCING JUDGE EXCLUSIVE AUTHORITY TO IMPOSE A YCA SENTENCE AND MANDATES SEGREGATION AND TREATMENT FOR OFFENDERS SENTENCED UNDER THE ACT.

A. Congress Enacted the YCA to Provide Alternative Sentencing Options and a Special, Rehabilitative System for Youthful Offenders.

The Federal Youth Corrections Act, enacted in 1950, is a comprehensive sentencing statute directed at offenders who are under the age of twenty-two when convicted. 18 U.S.C. §§ 5005 *et seq.* In 1958, Congress enacted additional legislation to permit a court, under certain circumstances, to extend its benefits to offenders convicted before their twenty-sixth birthday. 18 U.S.C. § 4216.

The YCA is largely the outgrowth of an extensive study and report to the Judicial Conference by a committee of federal circuit and district court judges appointed to address the problem of the treatment of youthful offenders. *See Report to the Judicial Conference of the Committee on Punishment for Crime* (1942) (hereinafter cited as *Judicial Conf. Rep.*). The report concluded, based on the experience of the English Borstal System in effect since 1894, that special factors operate on youthful offenders to produce habitual criminals. *Id.* at 33-39. The Committee found the then-existing system of sentencing in the United States to be inadequate for dealing with the special problems posed by youthful offenders. *Id.* at 33-35. Under the established system, all offenders over the age of eighteen were treated as adults and were sentenced according to the offense for which they were convicted. They then were committed to the custody of

the prison authorities, who were empowered to determine the conditions of their confinement. The alternative system that the committee proposed, and which Congress adopted in enacting the YCA, marks a significant and deliberate departure from this conventional process. *Id.* at 6-9.

The Committee recommended, and the YCA incorporated, new sentencing options for federal judges. Under the YCA, the sentencing judge (a) may place a youthful offender on probation; (b) may commit him to the custody of the Attorney General for treatment for an indeterminate term of six years; (c) may commit him to the custody of the Attorney General for treatment for a specified period not to exceed the maximum adult sentence for the crime; or (d) may sentence the youthful offender as an adult. *Id.* at 17-20; 18 U.S.C. §§ 5010, 5017. Congress believed that providing these new options would

> promote the rehabilitation of those who in the opinion of the sentencing judge show promise of becoming useful citizens, and so will avoid the degenerative and needless transformation of many of those persons into habitual criminals.

H.R. Rep. No. 2979, 81st Cong., 2d Sess. 1 (1950) (hereinafter H.R. Rep. No. 2979).

The two elements of the program Congress created under the YCA that are specifically mandated by 18 U.S.C. § 5011 for YCA sentences are: (1) treatment and (2) segregation, both from non-YCA, adult offenders and from other classes of committed YCA offenders as determined by their needs for treatment. 18 U.S.C. § 5011. *See Durst* v. *United States*, 434 U.S. 542, 545-47 (1978); *Dorszynski* v. *United States*, 418 U.S. 424, 432-37 (1974); *Watts* v. *Hadden*, 651 F.2d 1354, 1356-58 (10th Cir. 1981); *Micklus* v. *Carlson*, 632 F.2d 227, 237 (3d

Cir. 1980); *United States ex rel. Dancy* v. *Arnold*, 572 F.2d 107, 109 (3d Cir. 1978); *Harvin* v. *United States*, 445 F.2d 675, 679-81 (D.C. Cir.) (en banc), *cert. denied*, 404 U.S. 943 (1971); *Brown* v. *Carlson*, 431 F. Supp. 755, 765-67 (W.D. Wis. 1977).

The legislative history of the YCA reveals the concern Congress expressed for the treatment of YCA offenders:

> The underlying theory of the bill is to substitute for retributive punishment methods of training and treatment designed to correct and prevent antisocial tendencies. It departs from the mere punitive idea of dealing with criminals and looks primarily to the objective idea of rehabilitation.

H.R. Rep. No. 2979 at 3.

Similarly, segregation from non-YCA offenders was of crucial concern. Congress explicitly described the prevailing system, which it firmly rejected in enacting the YCA:

> By herding youth with maturity, the novice with the sophisticate, the impressionable with the hardened, and by subjecting youth offenders to the evil influences of older criminals and their teaching of criminal techniques, without the inhibitions that come from normal contacts and counteracting prophylaxis, many of our penal institutions actively spread the infection of crime and foster, rather than check, it.

H.R. Rep. No. 2979 at 2-3.

This Court has recognized the YCA as "the most comprehensive federal statute concerned with sentencing." *Dorszynski* v. *United States*, 418 U.S. 424, 432 (1974). The system it establishes represents "a departure from traditional sentencing, and [is] focused primarily on correction

and rehabilitation." *Id.* at 433. This Court has emphasized that the congressionally-mandated program of treatment and segregation is the keystone of the Act. *Durst* v. *United States,* 434 U.S. 542, 545-47 (1978).

In the many cases that have arisen involving the implementation of the YCA, the courts consistently have held that the treatment and segregation requirements of the Act are mandatory. *See, e.g., Watts* v. *Hadden,* 651 F.2d 1354 (10th Cir. 1981); *Micklus* v. *Carlson,* 632 F.2d 227 (3d Cir. 1980); *United States ex rel. Dancy* v. *Arnold,* 572 F.2d 107 (3d Cir. 1978); *Brown* v. *Carlson,* 431 F. Supp. 755 (W.D. Wis. 1977). Courts have decried the intransigence of the Bureau of Prisons in failing to comply with the thirty-year-old dictates of Congress as embodied in the YCA.[3]

The Act thus significantly departs from the prior system in that it expands the discretion of the trial judge, allowing him not only to determine the length of an offender's sentence but also to commit young offenders to a special rehabilitative program. Correspondingly, the Act removes from the prison administrators much of the discretion previously vested in them by dictating the conditions of confinement that must be provided for those designated by the sentencing courts as YCA offenders.

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[3] *See, e.g., Watts* v. *Hadden,* 651 F.2d 1354, 1364 (10th Cir. 1981) ("It is now thirty years since the YCA was enacted. The record shows that not one institution is presently designated, set aside or adopted for YCA offenders. There is no alternative but to hold that this situation is completely out of harmony with the statute and the legislative history."); *Brown* v. *Carlson,* 431 F. Supp. 755, 765-66 (W.D. Wis. 1977) ("The harsh question for the court in the present cases is how to respond when it appears that an executive agency is failing to obey a legislative command.").

B. The YCA Explicitly Grants the Trial Court Exclusive Authority to Impose a YCA Sentence.

As this Court recently has reaffirmed, "in every case involving the interpretation of a statute, analysis must begin with the language employed by Congress." *Howe* v. *Smith*, 49 U.S.L.W. 4715, 4717 (June 17, 1981) (No. 80-5392) (citing *Rubin* v. *United States*, 49 U.S.L.W. 4103 (Jan. 21, 1981) (No. 79-1013), and *Reiter* v. *Sonotone Corp.*, 442 U.S. 330, 337 (1979)). When that analysis reveals no ambiguity, absent exceptional circumstances, "our inquiry comes to an end." 49 U.S.L.W. at 4718. The language employed by Congress in the YCA is unambiguous; moreover, the legislative history and the cases applying the statute mirror the unmistakable terms of the Act.

1. The Act Was Intended to Increase Judicial Sentencing Authority to Mandate Special Treatment and Segregation for Youthful Offenders.

In the YCA, Congress expressly vested in the trial judge the exclusive authority to choose whether to impose on a youthful offender a conventional sentence or a sentence pursuant to the YCA. 18 U.S.C. §§ 5010, 5023(a). Section 5010 sets forth the various options available to a judge sentencing a youthful offender. Each provision emphasizes the discretion of the sentencing court in choosing an appropriate sentence. 18 U.S.C. § 5010.

Under the YCA, the trial judge must evaluate each offender under the age of twenty-two to determine whether, in that judge's opinion, that youthful person might benefit from the special treatment and segregation that

accompany any sentence imposed under the Act.[4] Only the sentencing judge may make that determination:

> The proposed legislation is designed to make available for the *discretionary use of the Federal judges* a system for the sentencing and treatment of youth offenders that will promote the rehabilitation of those who *in the opinion of the sentencing judge* show promise of becoming useful citizens . . . .

H.R. Rep. No. 2979 at 1 (emphasis added).

The Act expands the traditionally broad range of discretion of the sentencing judge by allowing the judge to prescribe a distinct program of treatment. *Judicial Conf. Rep.* at 8-9. *See, e.g., Correctional System for Youth Offenders: Hearings on S. 1114 and S. 2609 before a Subcomm. of the Senate Comm. on the Judiciary*, 81st Cong., 1st Sess. 43-44 (1949) (hereinafter cited as *1949 Senate Hearings*); S. Rep. No. 1180, 81st Cong., 1st Sess. 10-11 (1949).

Indeed, this Court has ruled that the sentencing judge has unfettered authority to impose a YCA sentence and need not provide any explanation for his decision because no review of that decision by appellate courts was intended. *Dorszynski* v. *United States*, 418 U.S. 424 (1974). The decision of the Seventh Circuit in this case is strictly in accord with this Court's holding in *Dorszynski*. If a decision is not reviewable on appeal, *a fortiori* it may not be reviewed or modified by a subsequent trial court conducting separate and unrelated proceedings, nor by the Bureau of Prisons. *See* 642 F.2d at 1080-81, Pet. App. A, 8a-9a.

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[4] This Court held in *Dorszynski* v. *United States*, 418 U.S. 424, 425-26 (1974), that in order to sentence an offender under the age of twenty-two as an adult, the sentencing judge must first make a finding on the record that the offender will not benefit from YCA treatment. Although an offender between the ages of twenty-two and twenty-six also may receive a YCA sentence, an adult sentence may be imposed upon these older offenders without the "no benefit" finding. *See* 18 U.S.C. § 4216.

2. Congress Did Not Limit Application of the Act to Youths Who Commit Minor or Single Offenses.

Although the Bureau of Prisons never has provided Robinson with segregation and YCA treatment, the government maintains that he represents a "failure" of the YCA system. Pet. Brief at 20-21. The government repeatedly asserts that Robinson is not deserving of YCA treatment, that he has demonstrated himself to be an "adult" and that he is a "hardened criminal."[5] It is this precise determination which Congress has vested in the trial court exclusively. The premise of the Bureau's assertions must be that those who commit serious offenses, or more than one offense, are not to be treated as YCA offenders. The language of the Act, its legislative history, and its consistent application by the courts contradict this assumption.

The Act itself anticipates that some YCA prisoners will be serious or dangerous offenders. Therefore, the Act requires the Bureau of Prisons to make maximum security facilities available for YCA offenders. 18 U.S.C. § 5011.

The legislators contemplating the Act specifically discussed the benefits young people who had committed serious or repeated offenses might derive from YCA sentences.

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[5] The government repeatedly characterizes Robinson as a "hardened criminal," unfit for any but the most restrictive confinement, improperly relying on factual representations that are not in the record before this Court. Pet. Brief at 6-7 n.6, 13-14, 20-21, 30. That characterization is contradicted by the Bureau's own actions. While this case was before the court of appeals, the Bureau transferred Robinson from Marion, the penitentiary with the highest security rating, Pet. Brief at 30, to a medium security Federal Correctional Institution (FCI) at Memphis, *id.* at 9 n.10, and then to the special "administrative facility" at Butner, North Carolina, *id.* *See* Federal Prison System, United States Department of Justice, *Facilities 1980* at 27, 53, 59.

1949 Senate Hearings at 26-27, 30, 65-66, 76-78. The legislators were convinced that it was the youth and attendant malleability of such offenders that rendered them suitable subjects for rehabilitation:

> Lots of them will commit crimes without much thought and as a result of social pressures to which they are subject, which they would not commit in their more mature years at all.

Id. at 48.

In addition, the legislature, by providing for a commitment of six years, anticipated that rehabilitation might require a substantial amount of time in certain cases. *See id.* at 66. The Congressional goal of rehabilitating youth is devoid of meaning if it applies only to those who commit minor offenses or are model prisoners.

Sentencing judges have consistently exercised their discretion to sentence serious offenders to YCA treatment. *E.g., Murphy* v. *United States,* No. 80-1552 (D.C. Cir. May 18, 1981) (burglary and armed robbery); *United States* v. *Calder,* 641 F.2d 76 (2d Cir. 1981) (robbery, extortion and conspiracy); *Outing* v. *Bell,* 632 F.2d 1144 (4th Cir. 1980) (armed robbery), *cert. denied,* 101 S. Ct. 1710 (1981); *Thompson* v. *Carlson,* 624 F.2d 415 (3d Cir. 1980) (assault with intent to rape); *United States* v. *McDonald,* 611 F.2d 1291 (9th Cir. 1980) (conspiring to possess cocaine with intent to distribute); *United States ex rel. Dancy* v. *Arnold,* 572 F.2d 107 (3rd Cir. 1978) (first degree felony murder and carrying pistol without license). Robinson, in the case at bar, was sentenced under the YCA for second degree murder.

In *United States* v. *Dancy,* 510 F.2d 779 (D.C. Cir. 1975), a young offender was convicted of first degree felony murder, second degree murder, attempted armed robbery and

carrying a pistol without a license. The court of appeals held that the sentencing judge erred in concluding that he had "no alternative under the statute" but to sentence the offender as an adult rather than under the YCA after the presentence report he ordered under section 5010(e) recommended adult sentencing. *Id.* at 784-85. The court found:

> This apparent surrender of discretion and responsibility to the Youth Center authorities is fundamentally at odds with the demands of traditional sentencing doctrine . . . [and] is manifestly inconsistent with the provision of the FYCA which places the responsibility both for making a finding of "no benefit" and for making the sentencing decision attendant thereto on the trial court alone . . . .

Id. at 785. On remand, the trial judge sentenced Dancy to a 20-year term under the YCA. *United States ex rel. Dancy* v. *Arnold,* 572 F.2d 107, 108-09 (3d Cir. 1978).

The First Circuit has held that a court sentencing a repeat offender, previously sentenced as an adult, was not precluded from imposing a YCA sentence. *United States* v. *Fortes,* 619 F.2d 108 (1st Cir. 1980). Indeed, no other interpretation would be consistent with this Court's holding in *Dorszynski* v. *United States,* 418 U.S. at 425-26, requiring an explicit "no benefit" finding each time an offender under the age of twenty-two is sentenced to an adult sentence.

It is, at base, the initial determination of the sentencing judge to which the government takes exception.[6] The

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[6] The government asserts that "[a]n offender's commission of a felony while under a YCA sentence reflects . . . the sentencing judge's error in ordering YCA treatment for an offender who would not benefit from it . . . ." Pet. Brief at 20-21. If, however, the Bureau of Prisons had given Robinson the treatment and segregation to which the YCA sentence entitled him, Robiinson's subsequent behavior might well have been different.

Bureau apparently is of the opinion that only "good" prisoners are deserving of rehabilitative treatment. Many offenders who judges have determined may benefit from YCA treatment, however, do not conform to the Bureau's ideal image. The YCA was not designed to benefit only the "good" prisoner; rather, it reflects the belief of Congress that young criminals may be rehabilitated. The authority to designate offenders for YCA treatment is given exclusively to the sentencing judge. Robinson's individual case was examined and his entitlement to YCA status permanently resolved when he was sentenced by the trial court which imposed the YCA sentence.

3. The Language of the YCA Precludes the Termination of YCA Status Prior to the Completion of the YCA Sentence.

Once the trial judge has made his determination to take advantage of the provisions of the YCA in sentencing a youthful offender, the Act does not provide for any forfeiture of that status. The statute defines a "committed youth offender" as "one *committed* for treatment hereunder to the custody of the Attorney General pursuant to Sections 5010(b) and 5010(c) of this chapter." 18 U.S.C. § 5006(e) (emphasis added). The critical assignment of YCA status is made by the sentencing judge.

The statute further sets forth, in mandatory terms, the treatment that is to be accorded committed youth offenders. 18 U.S.C. § 5011. Section 5011 clearly provides that any offender serving a YCA sentence

> shall undergo treatment in institutions of maximum security, medium security, or minimum security types, including training schools, hospitals, farms, forestry and other camps, and other agencies that will provide the essential varieties of treatment. The

> Director shall from time to time designate, set aside, and adapt institutions and agencies under the control of the Department of Justice for treatment. Insofar as practical, such institutions and agencies shall be used only for treatment of committed youth offenders, and such youth offenders shall be segregated from other offenders, and classes of committed youth offenders shall be segregated according to their needs for treatment.

18 U.S.C. § 5011.

In this case, the sentencing judge made a well-considered determination to sentence Robinson under the YCA. Along with the sentence, the judge made specific recommendations indicating that he envisioned a continuing, intensive, rehabilitative process that he had concluded would benefit Robinson. 642 F.2d at 1078, Pet. App. A, 2a.[7] Robinson's YCA treatment was in no way conditioned upon his subsequent behavior. In accordance with Robinson's sentencing under the YCA, 18 U.S.C. § 5010(c), he was to be committed "to the custody of the Attorney General for treatment and supervision" pursuant to the Act for a maximum term of ten years, "until discharged by the Commission as provided in Section 5017(d) of this Chapter." 18 U.S.C. § 5010(c).

Section 5017(d) provides that a YCA offender must be released conditionally, under supervision, not later than two years before the expiration of his sentence. The date

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[7] At the time Robinson was sentenced, a youthful offender in the District of Columbia was to be sentenced under the Youth Corrections Act absent special circumstances. *United States* v. *Philips*, 479 F.2d 1200 (D.C. Cir. 1973). The sentencing judge nevertheless, as required by the statute, made a careful, individualized evaluation of Robinson before sentencing him under the Act, as is reflected in the recommendations he made regarding Robinson's treatment. *Robinson* v. *Ralston*, 642 F.2d at 1078, Pet. App. A, 2a.

of Robinson's mandatory conditional release from his YCA sentence under this provision is January 9, 1982. By the terms of the Act itself, until his term computed in accordance with section 5017(d) expires, the YCA requirements of segregation and rehabilitative treatment must apply to Robinson.[8]

Thus, under the plain language of the Act a committed youth offender remains subject to the terms of the Act for the duration of his sentence. There is nothing in any provision of the Act specifying or suggesting that any subsequent event can overturn, or trigger a reevaluation of, the sentencing judge's determination that the offender be confined pursuant to the YCA.[9] The statute is

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[8] The Bureau of Prisons acknowledges that Robinson's mandatory conditional release date under section 5017(d) is January 2, 1982, at which time he will begin serving his consecutive adult sentence. Pet. Brief at 11 n.12. Inconsistently, the Bureau is still computing Robinson's sentence according to the YCA despite the fact that he has been reclassified, and is being treated in all other respects, as an adult prisoner.

[9] Courts have held that a sentencing judge is not precluded from imposing a consecutive adult sentence on a prisoner who is serving a YCA sentence. *Nast* v. *United States*, 415 F.2d 338, 340 (10th Cir. 1969). *Accord, United States* v. *Lyons*, 609 F.2d 1338, 1340-41 (9th Cir. 1979), *cert. denied*, 100 S. Ct. 1059 (1980); *Mustain* v. *Pearson*, 592 F.2d 1018, 1021 (8th Cir. 1979); *In re Grand Jury Proceedings*, 532 F.2d 410, 411-12 (5th Cir.), *cert. denied*, 429 U.S. 924 (1976); *Roddy* v. *United States*, 509 F.2d 1145, 1146-47 (10th Cir. 1975). As the Seventh Circuit stated in this case, however, the subsequently imposed consecutive adult sentence cannot "render legally ineffective the [YCA] sentence." 642 F.2d at 1082, Pet. App. A, 12a-13a (quoting *Mustain* v. *Pearson*, 592 F.2d at 1021).

unambiguous: a YCA offender remains subject to the terms of the Act until his sentence has terminated as provided in the statute.

II.

THE BUREAU OF PRISONS LACKS THE AUTHORITY TO REWRITE THE YCA TO EXCLUDE OFFENDERS WHO HAVE INCURRED SUBSEQUENT CONSECUTIVE ADULT SENTENCES.

The government concedes that Congress did not provide for the forfeiture of YCA status by a committed youth offender. Pet. Brief at 20-21.[10] Nevertheless, the Bureau of Prisons seeks to interpret the Act so as to permit it to exclude from the terms of the YCA any offender, such as Robinson, who receives a consecutive adult sentence. Many of the individuals who are placed in the custody of the Bureau of Prisons present problems for prison administrators. In many cases, the problems increase in the course of their commitment. Nevertheless, Congress did not authorize the Bureau to deny YCA treatment to troublesome cases. Although the administration of the prison system is a difficult task, the Bureau of Prisons has not been given the authority to rewrite the law to accommodate its perceived problems and needs or to implement its theory of penology. Congress has mandated the treatment to be afforded offenders sentenced under the YCA; the Bureau of Prisons must follow the mandate of Congress.

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[10] This absence of any forfeiture provision is a sufficient basis for rejecting the government's position. Because the YCA is a penal statute, the rule of lenity applies and any ambiguity in statutory language or congressional intent must be strictly construed against the government. *Kayamakcioglu* v. *United States*, 418 F. Supp. 356, 357 (S.D.N.Y. 1976).

A. The Bureau of Prisons' Policy of Reclassifying YCA Offenders with Consecutive Adult Sentences Is in Conflict with the Statute.

The government emphasizes that the reclassification of YCA offenders who receive consecutive adult sentences as adults is based on an official Bureau of Prisons policy statement. Bureau of Prisons Program Statement 5215.2 (Dec. 12, 1978). That policy statement provides in part:

> For the purpose of this policy statement, a "YCA Inmate" is any inmate sentenced under 18 U.S.C. Section 5010(b), (c), or (e) who is not also sentenced to a concurrent or consecutive adult term, whether state or federal.

The Bureau of Prisons will not accord YCA treatment to prisoners who, like Robinson, do not come within the terms of this definition.

The language of the YCA is directly at odds with the position taken by the Bureau of Prisons. Nothing in the Act suggests that Congress intended to exclude from its terms any offender who is serving a YCA sentence. A "committed youth offender," defined as one sentenced pursuant to section 5010(b) or (c), must be segregated and accorded the treatment dictated by the provisions of the YCA. 18 U.S.C. §§ 5006(e), 5011.

In support of its policy, the government argues that the Bureau's interpretation of the YCA is entitled to deference. Pet. Brief at 19-20. To the contrary, an "interpretation" that has no basis in the language of the statute or its legislative history is not entitled to any authoritative weight.

> [T]he Bureau of Prisons does not have a blank check [in interpreting the YCA]. It is required to follow

> the directions that have been laid down by Congress and if there is to be a change in the law, Congress should make the change. Deference to administrative interpretations is inappropriate where the result is clearly inconsistent with congressional intent.

Watts v. *Hadden*, 651 F.2d 1354, 1365-66 (10th Cir. 1981) (citing *Espinoza* v. *Farah Manufacturing Co.*, 414 U.S. 86, 94-95 (1973), and *United States ex rel. Dancy* v. *Arnold*, 572 F.2d 107, 113 (3d Cir. 1978)).

Program Statement 5215.2 redefines and limits the scope of the Act, frustrating the intent of Congress as expressed in the statute. The discretion granted the Bureau to implement the Act does not confer on that agency the power to impose a blanket limitation on the statute's reach. As Judge Hall emphasized in his persuasive dissent in *Outing* v. *Bell*, 632 F.2d 1144 (4th Cir. 1980), *cert. denied*, 101 S. Ct. 1710 (1981):

> [I]n excluding those youth offenders who have a concurrent or consecutive adult term, the Bureau does more than merely interpret or clarify the existing congressional intent; it has usurped the legislative prerogative by modifying the scope of the Act.

Id. at 1148 (Hall, J., dissenting).

The government suggests that the Bureau derives its authority to rewrite the statute from two sources: (1) the finding of a subsequent sentencing judge that the offender will not benefit from an additional YCA sentence for a separate offense and (2) the administrative discretion granted to the Bureau under the Act. As the Seventh Circuit correctly ruled in this case, however, there is no proper basis for the Bureau's policy.

B. The Imposition of a Future Adult Sentence Does Not Provide a Basis for Revoking Current YCA Status.

1. The Second Judge's Determination Does Not Supersede the YCA Sentence Being Served.

The Bureau of Prisons contends, and the majority in *Thompson* v. *Carlson*, 624 F.2d 415 (3d Cir. 1980), held, that a consecutive adult sentence imposed by a subsequent judge automatically supersedes any YCA sentence the prisoner currently is serving. Pet. Brief at 39-40. As the Seventh Circuit in this case found, this erroneous view is based on a misconception about the scope of the discretion granted to both the original and the subsequent sentencing judges.

Decisions about sentencing under the YCA are to be made by a particular judge in a particular case at the time of sentencing. All available information about the offender is to be applied. The fact that a subsequent sentencing judge has the benefit of then-current information about the offender ensures that he can exercise wisely the discretion vested in him to pass sentence on the offender in connection with the offense then at issue. He is not empowered to make any kind of retroactive determination about a sentence previously imposed on the offender for a separate offense. The subsequent judge is given no authority to declare that the defendant must serve the balance of his previously-imposed YCA term as an adult. Nevertheless, the *Thompson* majority concluded, and the Bureau of Prisons contends here, that the determination of a second judge, required by *Dorszynski*, that a YCA prisoner will not benefit from YCA treatment during his second sentence, constitutes an implicit finding that continued service of the original YCA sentence is no longer beneficial.

This argument proceeds on the assumption that the second judge addressed the issue of whether the current YCA treatment should be interrupted, instead of the issue of whether the offender would benefit from further YCA treatment when his YCA sentence expired. In expressly rejecting the holding of the Third Circuit in *Thompson* v. *Carlson*, the Seventh Circuit concluded that the finding of the subsequent judge that Robinson should serve his consecutive term as an adult did not represent an explicit or implicit finding that Robinson could not continue to benefit from YCA treatment for the remainder of his YCA term. 642 F.2d at 1079, Pet. App. A, 6a. Furthermore, the court stated that "the YCA does not permit such a reevaluation, even if it were explicitly made." *Id.* The court held that "the YCA mandates that [Robinson] be treated as a YCA prisoner so long as he is serving his YCA sentence . . . ." *Id.*[11]

As the court below noted, nothing in the record in this case suggests that the subsequent sentencing judges even considered the possibility that their imposition of consecutive sentences might operate to revoke Robinson's entitlement to YCA treatment.[12] *Id.* The precise issue before them was whether Robinson would derive benefit from additional YCA treatment upon completion of his current YCA sentence. In the case of the first consecutive adult sentence, the judge made only the finding required by law that Robinson would gain "no benefit" from an additional YCA

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[11] Not only was the Seventh Circuit panel unanimous in its holding in this case, but no judge of the circuit thought the panel's decision not to follow the Third Circuit's holding warranted an *en banc* hearing. 642 F.2d at 1079 n.5, Pet. App. A, 6a n.5.

[12] Indeed, as the court of appeals noted, the subsequent judges may well have sentenced Robinson as an adult to consecutive terms precisely because they contemplated his prior completion of his current YCA term. 642 F.2d at 1082, Pet. App. A, 12a.

sentence; in the case of the second sentence, the judge failed to make even that statutorily-required finding.[13]

The broad authority granted by Congress to the sentencing judge under the YCA would be eviscerated if a judge in an entirely unrelated proceeding could override his decision. The Seventh Circuit properly declined to infer that Congress intended such "a departure from well-established [sentencing] doctrine without a clear expression to disavow it." 642 F.2d at 1080, Pet. App. A, 9a (quoting *Dorszynski* v. *United States,* 418 U.S. at 441).

2. The Limited Administrative Discretion Granted the Bureau of Prisons Under the YCA Does Not Provide a Basis for Revoking YCA Status.

The government asserts that Congress has granted the Bureau of Prisons great latitude in implementing the YCA. The Act, however, is to the contrary. In it, Congress established a new, special category of prisoners: committed youth offenders. 18 U.S.C. § 5006(e). In so doing, Congress reduced the latitude previously granted prison authorities to categorize and to treat, as they deemed appropriate, all offenders committed to their custody. Congress granted to the trial court the exclusive discretion to invoke the terms of the YCA, which places specific, statutorily-mandated limitations on the choices that the prison authorities may make regarding the terms of a prisoner's confinement.

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[13] Although this issue is not before the Court, the imposition of the second adult sentence without a "no benefit" finding was illegal under the holding in *Dorszynski* v. *United States,* 418 U.S. 424, 425-26 (1973). The government has so conceded. Pet. Brief at 7 n.7.

The scope of discretion granted prison authorities under the Act is sharply limited. The YCA requires the Director of the Bureau of Prisons to establish classification facilities for evaluating and making recommendations for the treatment of committed youth offenders. 18 U.S.C. § 5014. The Director, upon receipt of those recommendations, must either release the offender conditionally, under supervision, or order his commitment to a facility that provides YCA treatment in accordance with the terms of the Act. *Id.* § 5015(a). The statute allows the Director to transfer a committed youth offender from one such facility to another. *Id.* § 5015(b). Finally, the Act directs that periodic reexaminations of the offender shall be made. *Id.* § 5016.

Nowhere in its recitation of the responsibilities of the Director or of the Bureau of Prisons does the statute indicate that any reevaluation may be made of the threshold determination that an offender should be committed pursuant to the YCA; nor is there any mechanism for terminating the committed youth offender's status as a YCA offender.

The Bureau of Prisons maintains that the "insofar as practical" language of section 5011[14] frees the Bureau to ignore the segregation requirement whenever the Bureau concludes that such segregation is administratively incon-

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[14] The language relied upon by the government states:

> The Director [of the Bureau of Prisons] shall from time to time designate, set aside, and adapt institutions and agencies under the control of the Department of Justice for treatment. Insofar as practical, such institutions and agencies shall be used only for the treatment of committed youth offenders, and such youth offenders shall be segregated from other offenders, and classes of committed youth offenders shall be segregated according to their needs for treatment.

18 U.S.C. § 5011.

venient or in conflict with the Bureau's penological philosophy.[15] The Bureau of Prison's interpretation of that provision is incorrect.

The legislative history makes it clear that Congress intended to impose an absolute, unqualified segregation requirement while granting the Bureau discretion in the classification of inmates and the choice of institutions.

> The Director is required to designate, set aside and adapt institutions and agencies under the control of the Department of Justice for treatment. Such institutions and agencies are to be used only for the treatment of youth offenders, so far as practicable; and youth offenders are to be segregated from other offenders, and the classes of offenders are to be segregated according to their needs for treatment.

H.R. Rep. No. 2979 at 3-4.

The court of appeals in this case and the Third Circuit in *Thompson* v. *Carlson* were in accord in rejecting the Bureau's reading of section 5011. Both courts correctly concluded that the qualification "insofar as practical" relates only to the requirement that the facilities set aside for treatment of YCA inmates be used exclusively for such

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[15] The government's representations regarding the practical problems implementation of the Act poses are unsubstantiated and have never been subjected to challenge or review in the lower courts. *E.g.*, Pet. Brief at 25-32 & nn.16-18. Thus, the government should be precluded from relying on those representations here. Should the Court determine that the factual issues the government attempts to raise for the first time before this Court are relevant, decision on this undeveloped record would be inappropriate, and the Court should dismiss the writ of certiorari in this case as improvidently granted. *See, e.g., Johnson* v. *Massachusetts*, 390 U.S. 511 (1968); *Wainwright* v. *City of New Orleans*, 392 U.S. 598 (1967); *Smith* v. *Mississippi*, 373 U.S. 238 (1963); *Atchley* v. *California*, 366 U.S. 207 (1961); *Rice* v. *Sioux City Memorial Park Cemetery, Inc.*, 349 U.S. 70, 78 n.2 (1954).

purposes; the phrase does not modify the balance of the sentence, which explicitly directs that YCA offenders be segregated from adult offenders and be further segregated in classes according to their particular needs. As the *Thompson* court and the court below observed, to construe this language as empowering the Bureau to reclassify an inmate serving a YCA sentence as an adult would be in direct conflict with the statute:

> If we were to so construe the statute, we would expand considerably the power given to the Bureau of Prisons by vesting in it that which Congress has given exclusively to the judiciary, *i.e.*, the determination whether the offender can benefit under the YCA. We find no statutory basis or policy reason for such a construction. Despite the control given the Bureau of Prisons over many aspects of the commitment of the youth offender, Congress has not given it either the power to invoke or the power to revoke the application of the statute to a committed youth offender. Even in the case of prisoners who have manifested serious adjustment difficulties after commitment, the Bureau of Prisons is limited to designation of an appropriate institution or, as we noted in [*United States ex rel Dancy* v. *Arnold*, 572 F.2d 107 (3d Cir. 1978)], segregation of committed youth offenders according to their needs for treatment. 572 F.2d at 113 n.10.

Thompson v. *Carlson*, 624 F.2d 415, 421 (3d Cir. 1980), *quoted in Robinson* v. *Ralston*, 642 F.2d at 1082, Pet. App. A, 13a-14a.

Only one court has held to the contrary on facts paralleling those presented in this case. *Outing* v. *Bell*, 632 F.2d 1144 (4th Cir. 1980), *cert. denied*, 101 S. Ct. 1710 (1981). The *Outing* majority, like the government here, relies on the argument that segregating offenders such as Robinson would lead to the mixing of YCA prisoners of differing levels of "criminal sophistication." Pet. Brief

at 24-27.[16] The *Outing* majority, however, failed to examine the specific language of the Act which directs the Bureau to evaluate the particular needs of YCA offenders, to classify them and, as appropriate, to segregate them from each other. This provision represents the solution Congress specifically devised for this problem and is a complete answer to the government's argument.[17] *See* 18 U.S.C. §§ 5011, 5013-5017.

The reasons cited by the government for excluding committed youth offenders with consecutive adult sentences from YCA treatment reveal that the real basis for the policy is the Bureau's fundamental disagreement with the penological philosophy on which the YCA is based.[18] The

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[16] As the persuasive dissent in *Outing* emphasized, the majority's "refusal to recognize that mandatory segregation of a YCA inmate is required by the statute is clearly contrary to the overwhelming weight of authority." 632 F.2d at 1148 (Hall, J., dissenting).

[17] Asserting that "this contrived and artificial categorization of offenders bears no relation to the policies underlying the YCA or any other rational penal system," Pet. Brief at 11-12, the government ignores the fact that the language of the Act itself explicitly provides for such categorization. Whatever the Bureau of Prisons' conception of what constitutes a "rational penal system," the statute enacted by Congress clearly mandates the segregation of committed youth offenders such as Robinson from non-YCA prisoners and, if necessary, from other classes of YCA prisoners.

[18] The YCA reflects Congress' view that special treatment of young offenders will strengthen them to resist pressures that might otherwise lead them to further criminal activities. The Bureau objects to treating Robinson as a YCA prisoner when, at the end of his YCA term, he will not reenter society but will commence an adult sentence. Pet. Brief at 33-37. But the strengthening effect of YCA treatment would be of at least equal benefit to a youth preparing to embark on an adult prison sentence as to a youth preparing for reintegration into normal society, where the corrupting influences that concerned Congress might be less prevalent. *See, e.g., Thompson* v. *Carlson*, 624 F.2d 415, 428 (3d Cir. 1980) (Adams, J., dissenting), *quoted in Ralston* v. *Robinson*, 642 F.2d at 1082, Pet. App. A, 11a-12a.

III.

MODIFICATION OF A YCA SENTENCE CURRENTLY IN FORCE VIOLATES CONSTITUTIONAL GUARANTEES.

The change in status from a YCA to an adult offender deprives a prisoner of the special treatment to which the statute entitles him and increases the severity of the sentence. Therefore, the government's interpretation of the Act renders the statute unconstitutional. This Court should not construe the Act to violate the Constitution if any other construction is possible. *N.L.R.B.* v. *The Catholic Bishops of Chicago*, 440 U.S. 490, 500 (1979) (citing *Murray* v. *The Charming Betsy*, 2 Cranch 64, 118 (1804) (Marshall, C.J.)).

A. Changing Robinson's YCA Sentence to an Adult Sentence Violates the Equal Protection Guarantee.

The minimum six-year sentence provided by the YCA is in excess of the maximum adult sentence that can be imposed in some cases. Various courts of appeals have rejected the claim that the YCA violates the equal protection guarantee by permitting youths to be sentenced for a longer period than adults for the same violation. These courts have upheld the constitutionality of the YCA on the premise that "the basic theory of the Act is rehabilitation and in a sense this rehabilitation may be regarded as comprising the *quid pro quo* for a longer confinement but under different conditions and terms than a defendant would undergo in an ordinary prison." *Carter* v. *United States*, 306 F.2d 283, 285 (D.C. Cir. 1962) (Burger, J.). *Accord, Caldwell* v. *United States*, 435 F.2d 1079, 1081 (10th Cir. 1970); *Brisco* v. *United States*, 368 F.2d 214, 215 (3d Cir. 1966); *Rodgers* v. *United States*, 326 F.2d 56 (10th Cir. 1963); *Cunningham* v. *United States*, 256 F.2d 467, 472 (5th Cir. 1958).

Bureau of Prisons may not disregard the Act, which provides simply and emphatically that committed youth offenders must receive treatment and segregation; the individual needs of the particular YCA offender are to dictate his treatment.[10] It is the language of the Act that must guide the Bureau. *E.g., Watts* v. *Hadden*, 651 F.2d 1354, 1366 (10th Cir. 1981); *Johnson* v. *Bell*, 487 F. Supp. 977, 982, 987-88 (E.D. Mich. 1980).

If the Bureau wishes to see the Act rewritten to permit the result it urges in this case, it may not undertake the rewriting itself nor should it ask this Court to do so; instead, it should address its arguments directly to Congress.

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[10] The Bureau suggests that a prisoner's proximity to family members is more important than, and incompatible with, YCA treatment and segregation. Pet. Brief at 25-26 n.16, 29-30. The Bureau's avowed concern for keeping prisoners close to their families is thoroughly belied by the repeated transfers to which it has subjected Robinson. *Id.* at 6-9 & n.10. In the seven years since his YCA conviction, Robinson has been confined in at least seven different institutions at the following locations: Ashland, Kentucky; Oxford, Wisconsin; Lompoc, California; Terre Haute, Indiana; Marion, Illinois; Memphis, Tennessee; and Butner, North Carolina. *Id.* The Bureau obviously has displayed little concern for preserving Robinson's ties with his family in Washington, D.C. The practice of shipping prisoners from one facility to another within the system apparently is common. *See, e.g., Micklus* v. *Carlson*, 632 F.2d 227, 230-31 (3d Cir. 1980) (offender sentenced under YCA incarcerated at six different institutions, none of which provided YCA treatment, in a 3½-year period).

In applying its policy, the Bureau converts YCA sentences, imposed by judges who had the rehabilitative programs and goals of the YCA in mind when imposing them, into adult sentences that lack the special elements of the YCA sentence. That change effectively eliminates this constitutionally-required *quid pro quo*. Even if, as in Robinson's case, the YCA sentence did not exceed the maximum sentence that could have been imposed for the offense, the rehabilitative opportunities of the YCA sentence may well have been a crucial factor in the sentencing judge's decision regarding the length of the sentence. The drastic alteration in converting a YCA sentence into an adult sentence raises grave equal protection questions. *See Watts* v. *Hadden*, 652 F.2d 1354, 1365 (10th Cir. 1981); *United States ex rel. Dancy* v. *Arnold*, 572 F.2d 107, 111 (3d Cir. 1978); *United States ex rel. Sero* v. *Preiser*, 506 F.2d 1115, 1130-31 (2d Cir. 1974), *cert. denied*, 421 U.S. 921 (1975). *See also United States ex rel. Wilson* v. *Coughlin*, 472 F.2d 100, 103 n.6 (7th Cir. 1973).

B. The Change in Robinson's Sentence Arising from a Second, Unrelated Proceeding Violates the Prohibition Against Double Jeopardy.

The denial of the segregation and treatment mandated by Robinson's YCA sentence constitutes an increase in the severity of his sentence after he has begun to serve it, violating the guarantee against double jeopardy set forth in the Fifth Amendment to the United States Constitution.[20] The

[20] A change in the terms of the sentence, as well as in its length, constitutes a more severe sentence. *See United States* v. *McDonald*, 611 F.2d 1291, 1294-95 (9th Cir. 1980); *United States* v. *Hawthorne*, 532 F.2d 318, 323-24 (3d Cir.), *cert. denied*, 429 U.S. 894 (1976).

plain language of the Act did not apprise Robinson that any review or revision of his YCA sentence was possible.

In *United States* v. *DiFrancesco*, 49 U.S.L.W. 4022 (Dec. 9, 1980) (No. 79-567), the Court upheld, against a due process challenge, a statutory provision that authorized the government in some instances to appeal a criminal sentence imposed by the district court. The Court charged the defendant with knowledge of the statute and its appeal provisions. Because the provision expressly authorized appeal, the defendant had "no expectation of finality in his sentence until the appeal is concluded or the time to appeal has expired." 49 U.S.L.W. at 4028.[21]

The *DiFrancesco* Court left open the precise issue raised here. The YCA does not contain a provision authorizing sentence review as did the statute at issue in *DiFrancesco*. Indeed, this Court has held that no review of a YCA sentence is permissible, *Dorszynski* v. *United States*, 418 U.S. at 425-26; nor is there statutory authority for revision of a YCA sentence either by a judge in an unrelated proceeding or by the Bureau of Prisons. The Fifth Amendment protection against double jeopardy would be violated by reading into the Act the authority to revise Robinson's sentence.

C. The Change in Robinson's Sentence Violates the Due Process Guarantee.

The Bureau of Prisons' interpretation of the YCA is also defective because it violates the due process guarantee

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[21] The Court suggested, however, that alteration of a sentence, even when the statute contemplates revision, might not be permitted once an offender has begun serving his sentence. *Id.* at 4027-28.

under the Fifth Amendment. Robinson has a statutorily-created right under section 5011 of the YCA to receive the special treatment and segregation Congress has mandated. That entitlement to YCA treatment creates an interest protected by the due process clause. *Micklus* v. *Carlson*, 632 F.2d 227, 238 (3d Cir. 1980). Even if it were constitutionally permissible to deprive Robinson of that statutory right, such a revocation would have to be made in accordance with the requirements of due process. *See Meachum* v. *Fano*, 427 U.S. 215, 225-27 (1976); *Montayne* v. *Haymes*, 427 U.S. 236, 242 (1976). The courts imposing the consecutive adult sentences here did not meet these due process requirements. As the Seventh Circuit stated, these courts apparently never even considered, much less decided, whether Robinson could continue to derive benefit from the Act for the remaining period of his YCA sentence. 642 F.2d at 179, 182, Pet. App. A, 6a, 12a. No hearing or formal procedure was provided by the prison authorities before Robinson lost his YCA status. Whatever process was due, Robinson did not receive it.

IV.

SHOULD THE COURT DETERMINE THAT THIS CASE HAS BECOME MOOT, THE WRIT OF CERTIORARI SHOULD BE DISMISSED AS IMPROVIDENTLY GRANTED.

The government contends that this case will become moot on January 9, 1982, when Robinson completes his YCA term. If this Court accepts the government's argument, and if this Court is prevented from issuing its decision before that date, the writ of certiorari granted in this

case should be dismissed. The government argues that, if this case becomes moot, this Court should vacate the judgment of the court of appeals with directions to the district court to dismiss the case. Pet. Brief at 11 n.12. Although the Court sometimes has relied upon the case cited by the government, *United States* v. *Munsingwear*, 340 U.S. 36 (1950), in vacating a judgment of a court of appeals when a case has become moot, vacation would be wholly inappropriate in this case.

Robinson opposed the granting of the writ of certiorari in part on the ground that his YCA term soon would expire. Should the Court be prevented from rendering a decision before January 9, 1982, it would be inappropriate then to dismiss the appeal and vacate the decisions of the lower courts. Such an order would have the effect of eliminating the conflict that now exists among the courts of appeals, leaving a misleading appearance of uniformity as to an issue that is in fact the subject of considerable controversy. Neither *Munsingwear* nor any other decision of this Court requires such a result.

If the Court determines this case has become moot, the writ of certiorari should be dismissed as improvidently granted.

CONCLUSION

For the reasons set forth above, the judgment of the United States Court of Appeals for the Seventh Circuit should be affirmed.

If the Court should conclude that this case has become moot before the Court has issued its decision, the writ of certiorari should be dismissed as improvidently granted.

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